ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Rules and	)	CS Docket No. 97-98
Policies Governing Pole	)	
Attachments	)	

To: The Commission

COMMENTS OF GTE SERVICE CORPORATION

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TABLE OF CONTENTS

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GTE Service Corporation ("GTE"), on behalf of its affiliated telephone operating companies, hereby submits its comments in response to the Notice of Proposed Rulemaking issued in the above-referenced docket.[1] GTE applauds the Commission's initiative to modify the existing pole attachment formula in order to more accurately reflect the costs imposed on pole attachment providers. The record herein should also inform the soon-to-be-initiated rulemaking regarding pole attachment rate modifications mandated by the Telecommunications Act of 1996.[2]

It is important to emphasize, however, that the rate formulas developed in this docket should serve solely as a last resort where private negotiations fail to establish mutually agreed attachment rates. The Commission's goal, which GTE supports, is to create a system in which

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[1] *Amendment of Rules and Policies Governing Pole Attachments*, FCC 97-94 (Mar. 14, 1997) ("NPRM"). *See Amendment of Rules and Policies Governing Pole Attachments*, DA 97-894 (Apr. 29, 1997) (Order).

[2] *See* 47 U.S.C. § 224(e).

private negotiations remain the primary tool for addressing attachment issues. The most efficient deployment of Commission resources would be to intervene only if marketplace forces do not achieve a bargained result.

INTRODUCTION AND SUMMARY

The genesis of this proceeding is the now widespread concern that the Commission's rules relating to the establishment of attachment rates for utilities' poles, ducts, conduits and rights of way require revision in view of legal, regulatory and marketplace changes affecting both attaching and utility parties. Spurred by filings from Southwestern Bell Telephone Company ("SWB") (regarding anomalies in the current rate formula) and a group of electric utilities (regarding the continuing validity of historical pole height and usable inventory assumptions), the FCC seeks comment on a number of proposed modifications to the existing rules. While the agency's proposals are for the most part positive, in a number of areas they simply do not go far enough to remove distortions that will be increasingly produced by application of the current rules. As a result, GTE urges the Commission to adopt the changes described below and to decline to make other proposed changes that will exacerbate the distorting impact of the rate formula.

This is a critically important concern for GTE because it operates systems in 28 states and owns approximately 3,159,000 poles and more than 30,000 trench kilometers of conduit. GTE already provides attachments to a number of entities and expects the demand for attachments to grow substantially in the coming years. The failure to establish an economically reasonable rate formula as a backstop to privately negotiated agreements will undermine such negotiations by creating perverse incentives for attaching parties to hold out

for unrealistically low rates that will be non-compensatory to utilities. In an analogous situation, the Eighth Circuit found that the potential for such a disruptive impact on interconnection negotiations warranted a stay of the FCC's proxy prices for unbundled network elements.[3] Accordingly, the issues raised in the NPRM should be resolved as follows:

- Attachment rates should be set to recover the gross book costs as proposed in the NPRM. Use of gross book costs ensure full compensation for utilities and will remove distortions in the current formula caused by depreciation reserve anomalies.

- The rate formulas adopted in this proceeding should apply equally to telecommunications and other utilities irrespective of the nature of the attaching party in order to preserve a level playing field.

- The proposal for tracking Part 31 accounts to Part 32 accounts will remove existing confusion and should be implemented.

- A presumptive 11.25% rate of return is a realistic and appropriate figure where states no longer prescribe earnings levels.

- The 40-inch electrical safety space is non-usable and its costs should be shared by all attaching parties as are its benefits.

- The Commission should not complicate or distort the rate formula by changing its pole height presumption or excluding 30 foot or shorter poles.

- Actual accumulated deferred tax figures are available and should be employed in the rate formula instead of the current proxy in order to achieve a more accurate result.

- The proposed conduit rate formula should employ half-duct and maintenance reserve duct presumptions because they are supported by experience, and should also use gross book costs.

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[3] *See Iowa Utilities Bd. v. FCC*, 96 F.3d 1116 (8th Cir. 1996).

I. FORMULA ADJUSTMENT ISSUES

A. The Commission's Proposed Gross Book Methodology Should Be Used to Set Pole Attachments Rates.

In its petition, SWB explained that an anomaly in the current rate formula could lead to the calculation of a negative figure for net pole investment, resulting in unreasonably low attachment rates. The Commission sought "comment on the scope of the [SWB] problem."[4]

GTE agrees that the current pole attachment formula requires modification to more effectively reflect the costs associated with building and maintaining pole plant. While GTE has not as yet experienced the negative figures for accumulated pole plant depreciation that SWB has faced in Oklahoma, GTE's accumulated depreciation balances in six states will exceed gross pole investment in the near future. Using 1995 and 1996 investment and depreciation reserve balances, a straight-line growth rate projection shows that the following state operations will soon develop "negative net book" situations in the years indicated:

Arkansas	2001	Florida	2000
Illinois	1998	Michigan	2000
Nebraska	1998	New Mexico	1997

GTE can thus confirm that SWB's Oklahoma figures are not an isolated situation and a comprehensive solution is required.

It is also important to recognize that, in defining the scope of the problem, the Commission's analysis actually understates the distortions caused by the current methodologies. For example, contrary to the NPRM's presumption (¶ 25 and ¶ 26), it is not necessarily true that the full costs of the affected poles will have been recovered "at such time

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[4] NPRM ¶ 21.

that the net balance for poles becomes negative." Section 32.2000(g)(2)(ii) of Title 47 of the Code of Federal Regulations details how GTE must book depreciation charges. The section reads: "Companies, upon receiving prior approval from this Commission, or, upon prescription by this Commission, shall apply such depreciation rate, except where provisions of paragraph (g)(2)(iv) of this section apply, as will ratably distribute on a straight line basis the difference between the net book cost of a class or subclass of plant and its estimated net salvage during the known or estimated remaining service life of the plant." This defines full cost recovery of an asset as being the straight-line recovery of initial investment and estimated net salvage.

In the case of poles, estimated net salvage is most often a negative number in that removal charges for poles are typically substantially larger than gross salvage proceeds. Thus, as pointed out below, in order to realize full recovery of its pole investments, GTE must achieve depreciation reserve positions that significantly exceed the original investment. This results in large negative net book values. Commission depreciation rules recognize this fact and deem it appropriate for GTE to continue to apply Commission-approved depreciation rates until such time as the depreciation reserve achieves a position that represents initial investment plus estimated net salvage.

It follows that the subtraction of depreciation associated with both pole costs and removal expenses from a figure that includes only the former amount inevitably will understate the remaining unrecovered pole investment. In the six states where GTE's balances are about to go negative, GTE has recovered only the following percentages of its original pole investment:

Arkansas	86.5%	Florida	82.8%
Illinois	89.4%	Michigan	80.7%
Nebraska	91.8%	New Mexico	87.2%

Full recovery positions for these states, per Commission rules, would be:

Arkansas	206%	Florida	187%
Illinois	186%	Michigan	160%
Nebraska	167%	New Mexico	184%

Clearly, GTE will not have achieved a depreciation reserve position that is anywhere near a full cost recovery position at the time its pole net book values are estimated to become negative. Original pole investment will, most likely, not have been recovered and certainly estimated net salvage expenses will not have been recovered. Current pole attachment rate methodologies, which employ net book as a measure of full cost recovery, greatly distort the costs that should be reflected in appropriate pole attachment rates. Existing net book methodologies are incapable of correctly addressing the pole cost recovery elements of investment and large negative net salvage expense, and the resultant distortions skew any attachment rate calculation in a manner that produces rates that are far too low and are not reflective of true pole recovery costs.

It is similarly inaccurate to suggest that any shortfall in cost recovery from the inclusion of net salvage value in the rate formula is offset by over-recovery of maintenance expenses in the early years of pole life.[5] The use of average maintenance expenses in the calculation ensures that there will be no excess recovery over a utility's total pole inventory, which inevitably will reflect a mix of new and old pole plant. Thus, the Commission's

[5] *See* NPRM ¶ 25.

proposal to limit corrective action to those situations where the accumulated depreciation reserves have already gone negative is insufficient to resolve this serious problem.

GTE urges the Commission to adopt its proposal to calculate pole attachment rates using gross book costs rather than net book costs.[6] This method has a number of advantages over both the modified net cost proposal in the NPRM and the current formula. First, the gross book cost method would wholly eliminate any problems associated with factoring in a negative net cost for a bare pole and the production of negative attachment rates by removing the depreciation reserve from the rate calculation. As set out above, these problems are pervasive and serious and merit the Commission's attention.

Second, the gross book method eliminates the difficult logistical issues associated with calculating the net salvage amount as required by the Commission's modified net cost proposal.[7] The depreciation reserve has several components including depreciation expense accruals, gross salvage, cost of removal, and retirements. To remove the net salvage effect as proposed, the gross salvage and cost of removal would have to be removed from the historical accumulated depreciation reserve balance. This would be particularly difficult for GTE, which has several pole account depreciation reserves containing yearly activity that reflects significant history. GTE believes that in order to accurately remove the net salvage effect, it might be necessary to restate as much as 40 years of depreciation reserve activity. This would entail a cumbersome and labor intensive accounting exercise that does little to remove the

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[6] NPRM ¶ 29. GTE believes the rationale for adopting the gross book method for poles applies with equal force in the conduit context.

[7] As the Commission anticipated, "the extraction of the net salvage effect from accumulated depreciation could prove to be difficult." NPRM ¶ 28.

distortions any net book methodology introduces into the pole attachment rate calculation process.

Moreover, the depreciation expense component would have to be recalculated to reflect a depreciation rate that excluded net salvage. This revised depreciation rate would then have to be applied to all historical plant balances year-by-year to obtain a depreciation expense number that was free of net salvage expense. Needless to say, this process is extremely involved and would lend itself to disputes between the parties over the most appropriate net salvage amount. This would be a tremendously burdensome process.

Third, as the Commission points out, neither the Federal Energy Regulatory Commission ("FERC") nor the FCC require the net salvage effect to be provided in their accounting reports. GTE believes it is important whenever possible to use publicly available data to calculate pole attachment rates, so long as such data is reasonably accurate. That is the case with the gross book methodology.

Fourth, the gross book method would lend consistency and clarity to pole attachment rates. Under the modified net cost approach, described in the NPRM, net salvage would only be removed after the account balance becomes negative.[8] This would result in unwarranted rate churn, with pole attachment rates gradually declining over time (and eventually approaching zero), only to rise substantially after the balance becomes negative. There is no reason to mandate such a disruptive and administratively expensive result. In contrast, the

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[8] The Commission supports the delay in the net salvage adjustment because "we believe it to be appropriate to require that the account be left unadjusted until full recovery has occurred." NPRM ¶ 25. Yet, as demonstrated above, simply because the account balance becomes negative does not mean that full recovery has occurred. The gross book method will avoid this guess work and provide for full recovery.

gross book method will lend stability and predictability to facilitate the business planning practices of both GTE and parties attaching to its poles.

If, notwithstanding the above, the Commission chooses not to adopt the gross book method described herein, then the NPRM's proposal to use a modified net cost approach is superior to the current method. As set out at NPRM ¶¶ 24-25, the proposed elimination of the net salvage amount from the accumulated depreciation balance when the net value of a pole becomes negative would eliminate the most obvious problem with the current methodology: the production of potentially negative pole attachment rates before full costs have been recovered. However, contrary to the suggestion in the NPRM, the correction should be applied at the request of a LEC wherever the problem exists, whether or not a particular depreciation reserve account has reached a negative balance.[9] While GTE believes the gross book method is superior, the modified net cost method will be more accurate than the current formulas.

B. The Rate Formula Rules Should Apply to All Attachments Regardless of the Identity of the Attachment's Owner.

In the interests of non-discrimination and competitive development, the pole attachment rates calculated under the new formula should apply with equal force to ILECs seeking attachments to the poles, ducts, conduits or rights of way of other utilities. The goal of the pole attachment formula has been, and continues to be, to prevent those with market power arising out of the ownership of pole infrastructure from using that power to hinder competition. Although the Commission has determined that utilities are not mandated to

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[9] *See* NPRM ¶ 25.

provide access to ILECs,[10] when such access is provided, GTE believes it is appropriate that the pole attachment rate formula serve as a backstop to private negotiations with the non-ILEC utility.

In the new competitive telecommunications environment, many utilities will now be competing against ILECs in a variety of markets. To permit utilities to price pole attachments anti-competitively for ILECs and, thereby, to impede the development of competition would be counter to the clear goals of the Act. The pole attachment requirements should not become a mechanism for unfairly tilting the playing field by burdening ILECs with rate setting obligations not shared by other similarly-positioned utilities.

C. The Commission's Proposal Regarding The Tracking of Part 31 Accounts to Part 32 Should Be Adopted.

GTE welcomes the Commission's mapping proposal to update the pole attachment formula to reflect the Part 32 Uniform System of Accounts.[11] The Commission replaced its Part 31 system of accounts back in 1988 with Part 32; however, there was no corresponding adjustment to the pole attachment rate formula at that time. Although the resulting confusion has been ameliorated by guidance from the Common Carrier Bureau,[12] the formal promulgation of the formula using Part 32 accounts is a welcome change. GTE believes the Commission's proposal at Appendix B should therefore be adopted.

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[10] *See* First Interconnection Order, ¶ 1231.

[11] *See* NPRM ¶ 30.

[12] Letter from Kenneth P. Moran, Chief, Accounting and Audits Division, Common Carrier Bureau, to Paul Glist, Esq., Cole, Raywid & Braverman, 5 FCC Rcd 3898 (CCB 1990).

D. The Proposed Rebuttable Presumption of a 11.25% Rate of Return Is Reasonable.

GTE further supports the proposal to adopt a presumptive 11.25% rate of return on pole related investment.[13] The rules currently employ the rate of return authorized for the utilities' intrastate services. However, as the Commission acknowledges, many states have moved away from rate of return regulation. For example, in GTE's service areas, nine states have already eliminated rate of return regulation, and others may do so in the near future. Where a state no longer prescribes a rate of return, the use of 11.25% as a proxy for inclusion in the rate formula is reasonable.[14] Such a presumption will lend predictability to the pole attachment process and prevent the necessity of ad hoc rate of return calculations based on a state's former rates. Moreover, 11.25% is an appropriate figure for setting a cost of capital in the current environment. Accordingly, it should be adopted.[15]

II. WHITEPAPER ISSUES

In addition to the issues raised by SWB, a group of electrical utilities submitted a Whitepaper raising a number of questions regarding the treatment of and assumptions underlying various aspects of the rate formula. Those questions should be resolved as set out below.

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[13] NPRM ¶ 37.

[14] This presumption, like others in the pole attachment rate calculation formula, may be rebutted by a persuasive showing that some other rate should apply.

[15] GTE notes that to the extent that states have exercised jurisdiction over pole attachments, states alone should be permitted to establish an appropriate rate of return. In these cases, the FCC has no role to play in setting rates.

A. The Forty-Inch Safety Space Required by the NESC Should Be Counted as Unusable Space and the Costs Divided Among All Attachers.

GTE believes that the 40-inch safety space should be treated the same as other non-usable space on a given pole: the cost should be shared by all parties with pole attachments consistent with the requirements of the Telecommunications Act.[16] There are important safety issues surrounding electrical pole attachments; the 40-inch safety space mandated by the National Electric Safety Code (NESC) is designed to benefit all attaching parties by protecting their workers from the risks of contacting electrical attachments. The mandatory nature of the safety space means that for all practical purposes this space is indeed unusable. This safety obligation benefits all parties and the general public by providing safe and reliable service; therefore, these costs are most appropriately borne by all parties.

B. The Commission Should Not Alter Its Presumption Regarding Pole Height.

The NPRM also seeks comment on the electric utilities' proposal to increase the current presumptive pole height from 37.5 to 40 feet.[17] There is simply no record or other basis for altering the current Commission presumptions regarding pole height at this time. The parties have failed to provide any data consistent with the requirements of 47 C.F.R. § 1.363 (regarding scientific and statistical studies) which supports their proposed revision of this presumption. To the extent that individual companies have average pole heights in excess

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16 47 U.S.C. § 224(e)(2).

17 NPRM ¶ 18.

of the current 37.5 feet, they can rebut the presumption with actual data when employing the rate formula in individual cases.

C. Thirty-Foot Poles Should Not Be Excluded from the Pole Attachment Rate Calculation.

There likewise is no basis for excluding poles 30 feet or less in height from the calculation of the cost of a bare pole.[18] First, it is not a simple matter for GTE to cull out poles that are 30 feet and less in height from its voluminous pole database. GTE does not routinely track and report poles based on height, and generating such calculations would be administratively burdensome and ultimately of little value to the Commission or pole attaching parties. Consequently, the Whitepaper's proposal would unnecessarily add an additional layer of complexity to a pole attachment rate calculation that is designed to be as clear and straightforward as possible.[19]

Moreover, these smaller poles are used for attachments by multiple parties. For example, contrary to the Whitepaper's assertion that "distribution poles of 30 feet and less cannot be used by multiple parties because they are not sufficiently tall,"[20] a thirty foot telecommunications pole with the presumptive 6 feet below ground and 18 feet of ground clearance would still have six feet of usable space, thus permitting multiple attachments. Even if such poles were joint use, there may be space for an additional attachment.

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[18] *See* NPRM ¶ 20.

[19] The Whitepaper's proposal would also add a variable to the formula (poles over 30 feet tall) that is not publicly available, thus undercutting one of the goals of the formula.

[20] Whitepaper filed by the law firm of McDermott, Will and Emery on August 28, 1996, at 9.

Finally, approximately 50% of GTE's poles are 30 feet or less in height. As previously stated, these poles are used for attachment by multiple parties and few are joint use, rendering the Whitepaper's presumptive exclusion of all poles 30 feet and shorter particularly ill conceived with respect to GTE's plant. Nor is there any quantitative support for the Whitepaper's suggestion that "many poles of 30 feet or less are used strictly for street lights and, therefore, are not applicable for joint use."[21] Thus, as a factual matter, no grounds have been presented that could justify excluding these poles from the rate formula inputs. For these reasons, GTE urges the Commission to continue to calculate the net cost of a bare pole using all poles regardless of height.

III. THE CALCULATION OF ACCUMULATED DEFERRED TAX SHOULD BE MODIFIED TO MORE ACCURATELY REFLECT THE ACTUAL AMOUNT OF DEFERRED TAXES.

The Commission should also act in this proceeding to modify its deferred taxes calculations to provide a more accurate view of these accounts. Under the current rules, the proxy for actual deferred taxes on poles is created by multiplying the total accumulated deferred income taxes for all plant by the ratio of gross pole investment divided by total gross plant investment. The resulting figure is at best a rough estimate of actual deferred taxes and, when employed in the rate formula, unnecessarily and unreasonably distorts the attachment rate.

The Commission can do better. Instead of this inaccurate proxy, the FCC should use the available figures for accumulated deferred taxes attributable to poles. The proxy, by lumping pole-specific deferred taxes in with all other deferred taxes and assigning a pro-rated

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[21] *See id.*

amount to poles, inflates the actual deferred tax figure. For many companies, the actual pole-specific deferred tax is negative because tax depreciation on poles trails behind book depreciation. Yet the proxy, by utilizing a ratio of overall accumulated deferred taxes, loses this information in the roughness of its calculation. In short, there is little correlation between the Commission's current proxy and the actual deferred taxes on poles.

The actual accumulated deferred taxes on poles figure is available from GTE's books and records.[22] Consequently, there is simply no need to use the current proxy method. The Commission should not ignore the imprecision of the current method of calculating accumulated deferred taxes on poles, but instead should move to incorporate the *actual* accumulated deferred taxes on poles into the attachment rate formula.

IV. THE COMMISSION'S CONDUIT RATE FORMULA PRESUMPTIONS ARE GENERALLY REASONABLE, BUT INPUT VARIABLES SHOULD REFLECT GROSS BOOK COSTS.

GTE supports the Commission's efforts to develop a conduit rate formula that is reasonable and fair. The agency points out that its experiences in dealing with conduit attachment rates is very limited. It follows that the Commission should adopt a clear and easy to administer conduit attachment approach that will lend predictability to rate calculations applicable to this emerging attachment medium. GTE believes that, as modified below, the NPRM's proposals largely meet these goals.

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[22] To the extent that some companies do not maintain actual deferred tax data, those companies should be given the option of continuing to use the Commission's proxy method.

First, the Commission's proposed half-duct presumption should be adopted.[23] GTE agrees that measuring the actual portion of duct space occupied by an attachment would be unduly burdensome and imprecise. Therefore, a presumptive space allotment is the most efficient method available to calculate rates.

While the half-duct presumption will generally be accurate, it should be treated solely as a presumption. The rules should permit the presumption to be rebutted where it can be demonstrated that a particular attachment will occupy the entire duct, thus precluding other attachments. In such cases, the attaching party would be charged a corresponding full duct rate.

Second, the Commission should adopt a presumption that one duct in each system will be reserved for maintenance and, thereby, removed from the total number of usable ducts available. It is a universal axiom of responsible duct management that a utility should always reserve one duct in each conduit run for maintenance purposes, which will effectively eliminate that duct from consideration as a pathway for attachments. This reserved maintenance duct should be made available to each and every occupant of the conduit for temporary emergency restoration of service. Because the shared reserved maintenance duct would advantage all conduit attachers, its corresponding costs should be borne by all parties.

Finally, as previously explained with respect to poles, the relevant costs to be included in the conduit rate calculation should be gross book costs. Use of the gross book method will

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[23] NPRM ¶ 44. This methodology is based on *Greater Media, Inc. v. New England Telephone and Telegraph*, Massachusetts D.P.U. 91-218 (1992).

eliminate the rate anomalies set fort in SWB's petition, lend consistency and clarity to the conduit attachment calculation, and be consistent with the Commission's treatment of poles.[24]

CONCLUSION

With the foregoing modifications, the Commission's proposed changes to the pole attachment rate should be adopted.

Respectfully submitted,

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[24] GTE agrees with the Commission (NPRM ¶ 42) that there is no non-cable related investment in Account 2441 that supports telephone operations exclusively. Therefore the computation of telephone company net conduit does not require an adjustment factor for such non-conduit investment.